



FINANCIAL INSTITUTIONS TODAY

News and topics of interest to financial institutions regulated by the Department of Banking and Finance

Monthly Bulletin #9

September 2011

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The Control Environment: Standards for Safety and Soundness (part 1 of a series)

"Many of the companies that have been the center of recent governance failures demonstrate some similar characteristics... a focus on sales growth and support and inadequate time spent building the control infrastructure." — Federal Reserve Governor Susan S. Bies (October 8, 2002)

In 1995, pursuant to Section 39 of the FDI Act, the Federal banking agencies jointly adopted "Guidelines Establishing Standards for Safety and Soundness" while simultaneously adopting regulations to enforce these standards. For non-member banks, these standards are enforceable through Part 364 of FDIC Rules and Regulations and may be found in Appendix A to that regulation. The stated purpose of these standards is to identify and address problems at insured depository institutions before capital becomes impaired, without dictating how institutions must be managed and operated. Though the standards are not specifically enumerated in Georgia law, the Department has similar authority to enforce standards of safety and soundness at financial institutions (banks, credit unions, etc.) through Section 7-1-91 of the Financial Institutions Code of Georgia.

In a prior series of Bulletin articles titled the "Board of Directors: The Essential Roles of Governance and Oversight", we identified four key areas of responsibility for a financial institution board of directors. The fourth and final of those responsibilities was: "Establish policies and the control framework within which management operates." While the enumerated standards embedded in Federal agency regulation are designed to guide regulators in assessing a financial institution's safety and soundness, they also represent a foundational framework underpinning the financial institution control environment. Several operational and managerial standards as well as compensation practices considered to be unsafe and unsound are listed in the guidelines, but specific elements to be further expanded upon in subsequent Bulletin articles on this topic include:

1. Effective systems of internal controls;
2. Independent internal audit function; and
3. Asset quality standards – underwriting, credit administration, and loan review.

As noted in last month's Bulletin, effective governance and oversight is implemented in part by establishing an effective system of controls through policies, limits, and verification functions. A systematic approach to verifying conformity with approved policies and limits is an essential element of an effective control environment. Independent internal audit and loan review functions, when properly staffed with experienced and well trained professionals, provide boards of directors with reasonable assurance that policies and limits are being adhered to as part of the day-to-day operation of a financial institution. Accordingly, effective internal audit and loan review functions are an important element in support of a director's ability to meet the fiduciary duties of that office. The nearly decade old quote from Governor Bies, prior to the banking crisis, is still valid today. An effective control environment is fundamental to the safety and soundness of individual banks and credit unions, just as it is to a healthy banking system.

ATM Disclosures: A Simple Reminder That Can Save You Money

Regulation E, issued by the Board of Governors of the Federal Reserve System pursuant to the Electronic Fund Transfer Act (EFTA), established the basic rights, liabilities and responsibilities of consumers who use electronic fund transfer services and of financial institutions that offer these services. The primary objective of Regulation E is the protection of individual consumers engaging in electronic funds transfers.

Regulation E requires that financial institutions must provide a disclosure regarding fees that are (or may be) associated with using an ATM. In addition to the content of that disclosure, Regulation E prescribes where the disclosures must be located on the ATM. Two forms of notice are required. The first is the “screen or paper notice”. This is the notice that pops up on the ATM screen (or appears on a slip of paper) during the transaction that alerts a customer that a specific amount will be charged for the pending transaction, allowing the consumer to cancel the transaction request to avoid the fee. The second form of disclosure, known as the “on machine” notice, requires a bank to post a notice in a “prominent and conspicuous location” on the ATM that a fee may be imposed.

It is the “on machine” notice that has been generating a great deal of litigation. The past 12 months has seen a small explosion in the number of suits that have been filed. For example, one law firm in Texas has filed approximately 60 individual actions in federal courts across Texas, Alabama, and Tennessee. In April, the Detroit Free Press reported a story about a retired couple who take road trips to seek out ATMs with inadequate signage. To date, the couple has filed approximately 30 lawsuits alleging EFTA violations.

The purpose of this Bulletin article is a reminder that the small things count. A review of your institution’s ATMs could prevent potential litigation or losses to your bank!

If you have questions about required ATM disclosures under Regulation E, you should contact the Federal Reserve and/or your legal counsel to discuss them.

DBF Outreach AND UPCOMING SPEAKING ENGAGEMENTS

- ❖ Commissioner Braswell will be participating on a regulatory panel on **October 11th** at the [GBA President/CEO Conference](#) at The Ritz Carlton Lodge, Reynolds Plantation, Greensboro, GA.
- ❖ Deputy Commissioner for Non-Depository Financial Institutions Rod Carnes will be speaking to the Atlanta Mortgage Bankers Association on **October 11th** at [Villa Christina Restaurant](#), Atlanta, GA.

FinCEN Proposes Mandatory Electronic Filing of Reports Required Under the Bank Secrecy Act

On September 14, 2011, the Financial Crimes Enforcement Network (FinCEN) announced a proposal to mandate electronic filing of FinCEN reports required under the Bank Secrecy Act (BSA) beginning on June 30, 2012. This proposal is targeted at improving efficiency, reducing costs for the financial services industry, and enhancing the ability of investigators, analysts, and examiners to gain better, timelier access to important financial information.

BSA E-Filing is a free, web-based electronic filing system that enables filers to submit FinCEN reports through a secure network. Exempt from this E-Filing obligation is the Currency and Monetary Instrument Report, usually completed by individuals crossing the border into the United States. FinCEN is accepting comments on this proposal for 60 days after its publication in the Federal Register. For a copy of FinCEN's announcement, please see http://www.fincen.gov/news_room/nr/html/20110914.html.

Licensing / Registration Requirements for Check Cashers - State vs. Federal

The Department has become aware that there may be some confusion in regards to State versus Federal licensing and registration requirements for check cashers. Consequently, the Department would like to clarify who is required to obtain a check cashing license or registration under Georgia law versus the Federal registration and reporting requirements for check cashers that meet the definition of a Money Services Businesses (MSBs) under the Federal Bank Secrecy Act (BSA).

Georgia law requires anyone who cashes a check for a fee to be licensed or registered with the Department. Department issued licenses and registrations must be renewed annually on or before September 30th. Refer to the document link on the Department's website titled ["Do I Need a Georgia Check Cashing License or Registration?"](#) for further discussion of licensing versus registration under Georgia law.

In regards to Federal requirements under the BSA, the definition of "check casher" only applies to a business that engages in the cashing of checks in an amount greater than \$1,000 in currency or monetary or other instruments for any person on any day in one or more transactions. Thus, a business that implements a policy that restricts the dollar amount of checks cashed per person per day to under \$1,000 would not fit the definition of "check casher" under BSA regulations and would therefore not need to register as an MSB with FinCEN. Such a policy should be put in writing and should be strictly enforced by management. If the business even periodically cashes checks for one person (in one or more transactions in one day) for more than \$1,000, it will need to register with FinCEN as an MSB.

Check cashers meeting the definition of an MSB under the BSA are required to register with FinCEN as well as renew their registrations every two calendar years. The form, [Registration of Money Services Business, FinCEN Form 107](#), must be filed within 180 days of the first transaction that qualifies the check casher as an MSB under the BSA. After the initial registration with FinCEN, the check casher must file the form to renew its registration by December 31 of the second calendar year preceding the 24-month renewal period. Please refer to [FinCEN's resources for MSBs](#) for further information and forms for Federal registration.

Action on Applications for the Month of September:

The following is a summary of official action taken on applications by State Financial Institutions under Chapter 7-1 of the Code of Georgia and petitions for Certificate of Incorporation of Financial Institutions and other matters of interest during the month of September 2011.

FINANCIAL INSTITUTION CONVERSIONS

<u>PREVIOUS NAME</u>	<u>CONVERTED TO</u>	<u>APPROVAL</u>	<u>EFFECTIVE</u>
DOCO Regional Federal Credit Union	DOCO Credit Union Albany Dougherty County	Pending	

APPLICATIONS TO ESTABLISH A BRANCH OFFICE

<u>FINANCIAL INSTITUTION</u>	<u>BRANCH OFFICE</u>	<u>APPROVAL</u>	<u>BEGIN BUSINESS</u>
United Community Bank Blairsville	Arden Branch Office 2349 Hendersonville Road Arden, NC 28704 Buncombe County	09-08-2011	
Metro Bank Douglasville	Main Office 9340 The Landing Drive Douglasville, GA 30135 Douglas County	Pending	
Verity Bank Winder	Habersham Branch Office 748 Stonecypher Street Cornelia, GA 30531 Habersham County	Pending	

APPLICATIONS FOR RESERVATION OF A NAME

<u>PROPOSED NAME</u>	<u>COUNTY</u>	<u>APPLICANT</u>
DOCO Credit Union	Dougherty County	Mr. Barry O. Heape DOCO Regional Federal Credit Union 107 North Westover Boulevard Albany, GA 31708
SouthCrest Bank	Upson County	Ms. Jeannie B. Osborne Bryan Cave LLP One Atlantic Center, Fourteenth Floor 1201 West Peachtree Street, N.W. Atlanta, GA 30309-3488

FINANCIAL INSTITUTION MERGERS

FINANCIAL INSTITUTION
(SURVIVOR)

Georgia Bank & Trust Company of Augusta
Augusta, GA

MERGED INSTITUTION

Southern Bank & Trust
Aiken, SC

APPROVAL

Pending

EFFECTIVE

The Farmers Bank
Forsyth, GA

The Bank of Perry
Perry, GA

Pending

The Farmers Bank
Forsyth, GA

The Peoples Bank
Covington, GA

Pending

The Farmers Bank
Forsyth, GA

Spivey State Bank
Swainsboro, GA

Pending

APPLICATIONS FOR NEW SALE OF CHECK LICENSE

CHECK SELLER

Facebook Payments, Inc.
Palo Alto, CA

APPROVAL

09-08-2011

CHECK CASHER LICENSES ISSUED

CITY

Conyers
Jonesboro
Arlington
Tifton
Hazlehurst
Forest Park
Albany
Marietta
Mableton
Milton
Milledgeville
McDonough
Augusta
Covington
Savannah
Rome

APPLICANT NAME

Alfazi, Inc.
Amysam, Inc.
Dolex Dollar Express, Inc.
* Ina Management, Inc.
* Jay Madi Mart, Inc.
* La Fuente Musical, Inc.
* Pujan Enterprises, Inc.
* Quanta Brasil LLC
Ruben Services, Inc.
* Sadia Salim, Inc.
* Shree Ganesh Sai, LLC
* Silver Tiger Enterprises, LLC
Simi 414, Inc.
Vidhi Enterprises, Inc.
* Vinny Enterprises, Inc.
* Welcome 2012, Inc.

TRADE NAME

Conyers Check Cashing
Marathon Food Mart
Teledolex
Quick Change #82
Jay Madi Mart

BP Food Mart #22

Shell Food Mart
The Market Place
Liberty Chevron
C-Mart
Covington Raceway
One Stop Shop
Hop N Shop

* =Registered (O.C.G.A. 7-1-700 et al)

CUSTOMER SERVICE STAR FOR THE MONTH OF SEPTEMBER

It is the Department's goal to provide excellent customer service by meeting and exceeding the expectations of our customers. Along those lines, we would like to recognize the following individual for going above and beyond in serving our customers:

Applications Analyst Susan Nelson (MSBs) – The Department received comments from a customer stating: “I have to say Ms. Susan Nelson is a huge asset to the Department. She walked me through the whole process. Every time I emailed her, I got a response back in 5 minutes. Very quick follow-up. She was very generous and very helpful. Once again, I thank her and the Department for accepting my license application.”

**CONGRATULATIONS AND GREAT JOB TO THIS MONTH'S
CUSTOMER SERVICE STAR!!**



HOLIDAY CLOSING

This is a reminder that the Department will be closed on
Monday, October 10, 2011, for Columbus Day.



**GEORGIA
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BANKING AND FINANCE**

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We're on the Web!

**Visit our website at:
dbf.georgia.gov**

The Department is the state agency that regulates and examines banks, credit unions, and trust companies chartered by the State of Georgia. The Department also has regulatory and/or licensing authority over mortgage brokers/processors, lenders and loan originators, money service businesses, international banking organizations, and bank holding companies conducting business in Georgia.

Our **Mission** is to promote safe, sound, competitive financial services in Georgia through innovative, responsive regulation and supervision.

Our **Vision** is to be the best financial services industry regulator in the country – Progressive. Proactive. Service-Oriented.

Our Motto is: "Safeguarding Georgia's Financial Services"

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